

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 3RD OCTOBER 2007 / 11TH ASWINA 1929

WP(C).No. 16016 of 2007(F)

PETITIONERS:

**1. KANAKAM VAMANA SHENOY,
W/O. LATE VAMANA SHENOY, AIKKARAPARAMBIL HOUSE,
KATHRIKADAVU, KALOOR, COCHIN-17.**

**2. SOBHA VINOD, D/O. LATE VAMANA SHENOY,
-DO- -DO-.**

**BY ADV. SRI.SAJAN VARGHEESE K.
SRI.LIJU. M.P**

RESPONDENTS:

**1. GOPINATH SHENOY,
S/O. LATE VAMANA SHENOY, AIKKARAPARAMBIL HOUSE,
OPP. CHAKKAMADAM LANE, KATHRIKKADAVU, KALOOR,
COCHIN-17.**

**2. RAJAGOPALA SHENOY,
S/O. LATE VAMANA SHENOY, -DO- -DO-.
OFFICIAL ADDRESS: "CHITHRA TAILORS", SREEYAS
HARDWARES BUILDING, GOPALAPRABU ROAD, ERNAKULAM.**

**R1 & R2 BY ADV. SRI.G.SUBRAMANIAN
SRI.S.SHYAM**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 03/10/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

WP(C) NO: 16016/2007 F

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE PRELIMINARY JUDGMENT IN OS NO. 312/98 ON THE FILE OF II ADDITIONAL SUB JUDGE, ERNAKULAM.

EXT.P2. COPY OF THE COMMISSION REPORT DT. 4/10/02 IN OS NO. 312/98 ON THE FILE OF II ADDL. SUB COURT, ERNAKULAM.

EXT.P3. COPY OF THE FINAL DECREE DT. 14/12/04 IN OS NO. 312/98 ON THE FILE OF II ADDL SUB COURT, ERNAKULAM.

EXT.P4. COPY OF THE PETITION VIZ. IA NO. 840/06 IN OS NO. 312/98 ON THE FILE OF II ADDL. SUB COURT, ERNAKULAM.

EXT.P5. COPY OF THE COUNTER AFFIDAVIT FILED TO EXT. P4.

EXT.P6. COPY OF THE ORDER DT. 1/09/06 IN IA NO. 840/06 IN IA NO. 5338/01 IN OS NO. 312/98 ON THE FILE OF SUB COURT, ERNAKULAM.

RESPONDENT'S EXHIBITS NIL.

True copy

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M.N.KRISHNAN, J

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W.P.(C) No.16016 OF 2007

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Dated this the 3rd day of October 2007

JUDGMENT

This writ petition is filed challenging the order of the II Addl.Sub Court, Ernakulam in I.A.No.840/2006 in O.S.No.312/1998 whereby it dismissed the application filed by the defendants for passing a supplemental final decree. The main ground on which the learned Sub Judge dismissed the application was that there cannot be any supplemental final decree. Learned counsel for the petitioners has brought to my attention to the decision of the Apex Court reported in Hasham Abbas Sayyad v. Usman Abbas Sayyad(2007(2) SCC 355). In paragraph 8 it has been stated that there can be more than one final decree. A decree may be partly preliminary and partly final. Suppose the matter requires readjudication of the principal points it may not be possible to pass a supplemental decree. In certain cases the parties may have to file a fresh suit. So far as this case is concerned, in the preliminary decree, it declares that defendants are entitled to half share. Similarly the Commissioner, who had gone and inspected the property has also divided the property in to D,E,F,G and suggested D & F schedule

properties to be allotted to the defendants and E & G properties to the plaintiffs, C schedule property is a common pathway for all parties. So virtually every material necessary for passing a final decree and allotting shares to the defendants is available before court. There is no point in dragging the parties to unnecessary litigation. I am informed that the plaintiffs had already taken possession of E & G plots. By passing of a supplemental decree allotted D & F schedule in the Commissioner's report in favour of the defendants no hardship will be caused to the plaintiffs at all and their right and possession need not be disturbed also.

Therefore I direct the court below to pass a supplemental final decree allotting D & F schedule property to the defendants on payment of requisite court fee. I also make it clear that since stamp has been purchased for the entire property and as the plaintiffs have contributed the entire amount, and that as 50% of that amount has to be deposited by the defendants they may be directed to deposit and the plaintiffs be at liberty to withdraw that amount. After passing the supplemental final decree let it be informed to the concerned Sub Registry Office as provided under rules.

provided under the Civil Rules of Practice.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-